

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Gary Steven Scott,

C/A: 6:20-cv-3343-RMG

Plaintiff,

v.

Bryan P. Stirling,

Defendant.

ORDER AND OPINION

Before the Court is the Report & Recommendation (“R & R”) of the Magistrate Judge recommending that Plaintiff’s complaint be dismissed with prejudice (Dkt. No. 15). For the reasons set forth below, the Court adopts the R & R as the order of the Court and dismisses the complaint with prejudice.

I. Background

Plaintiff, a state prisoner proceeding *pro se* and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights. Plaintiff filed his complaint with this Court on September 1, 2020. On October 19, 2020 the Magistrate Judge issued Plaintiff an order informing Plaintiff his complaint was subject to dismissal as filed and provided Plaintiff with time to file an amended complaint. (Dkt. No. 9). Plaintiff was warned that failure to comply with the Court’s order could result in dismissal of his complaint. Plaintiff did not file an amended complaint within the time specified by the Magistrate Judge and on December 7, 2020, the Magistrate Judge issued an R & R recommending that Plaintiff’s complaint be dismissed with prejudice. (Dkt. No. 15). Plaintiff’s objections to the R & R were due by December 21, 2020. To date, Plaintiff has not filed objections to the R & R.

II. Legal Standard

The Magistrate Judge makes a recommendation to this Court that has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where there are specific objections to the R & R, the Court “makes a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* Where a petitioner has not objected, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee's note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection ... we do not believe that it requires any explanation.”). Because Petitioner filed objections to the R & R, the Court reviews the R & R *de novo*.

III. Discussion

After careful examination of Plaintiff's complaint and the R & R, the Court finds that the Magistrate Judge carefully addressed the issues and correctly concluded that Plaintiff's complaint should be dismissed. Namely, the Magistrate Judge correctly determined that the complaint fails to state a claim against Defendant Stirling. Further, the Magistrate Judge correctly recommended that the complaint be dismissed with prejudice. *See Workman v. Morrison Healthcare*, 724 F. App'x 280, 281 (4th Cir. 2018) (in a case where the district court had already afforded the plaintiff an opportunity to amend, directing the district court on remand to “in its discretion, either afford [the plaintiff] another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order”) (citing *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 630 (4th Cir. 2015)); *see also Bing v. BrivoSys., LLC*, 959 F.3d 605 (4th Cir. 2020).

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 15) as the order of the Court and **DISMISSES** Plaintiff's complaint **WITH PREJUDICE**.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Court Judge

December 29, 2020
Charleston, South Carolina